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Attorneys for Plaintiff and

Counterclaim Defendant

Trendtex Fabrics, Ltd.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

TRENDTEX FABRICS, LTD.,

Plaintiff,

v.

NTKN, INC., a Hawaii corporation;

HUNG KY, an individual; SHAKA

TIME, INC., Hawaii corporation;

TROPIHOLIC, INC., a Florida

corporation,

Defendants.

NTKN, INC.,

Counterclaim Plaintiff,

v.

CIVIL NO. 1:22-cv-00287-LEK-KJM

**COUNTERCLAIM DEFENDANT**

**TRENDTEX FABRICS, LTD.'S**

**ANSWER TO COUNTERCLAIM**

**PLAINTIFF NTKN, INC.'S**

**COUNTERCLAIM AGAINST**

**COUNTERCLAIM DEFENDANT**

**TRENDTEX FABRICS, LTD.;**

**CERTIFICATE OF SERVICE**

TRENDTEX FABRICS, LTD.,

Counterclaim Defendant.

**COUNTERCLAIM DEFENDANT TRENDTEX FABRICS, LTD.’S  
ANSWER TO COUNTERCLAIM PLAINTIFF NTKN, INC.’S  
COUNTERCLAIM AGAINST  
COUNTERCLAIM DEFENDANT TRENDTEX FABRICS, LTD.**

Counterclaim Defendant Trendtex Fabrics, Ltd. (“*Trendtex*”) files this Answer to Counterclaim Plaintiff NTKN, Inc.’s (“*NTKN*”) Counterclaim Against Counterclaim Defendant Trendtex Fabrics, Ltd. filed September 21, 2022 (the “*Counterclaim*”) [ECF 54-1]. To the extent that any allegation in the Counterclaim is not specifically admitted, the allegation is denied. Trendtex answers the corresponding numbered paragraphs of the Counterclaim as follows:

**ADMISSIONS AND DENIALS**

1. Trendtex avers that Paragraph 1 of the Counterclaim alleges legal conclusions not requiring a response. To the extent a response is required, Trendtex states that the Counterclaim purports to assert claims for intentional interference with prospective business advantage, business disparagement, and unfair and deceptive trade practices under HRS § 481A.

2. Trendtex admits the allegations in Paragraph 2 of the Counterclaim.

3. Trendtex admits the allegations in Paragraph 3 of the Counterclaim.

4. Trendtex avers that Paragraph 4 of the Counterclaim alleges legal conclusions not requiring a response. To the extent a response is required, Trendtex lacks information sufficient to admit or deny the allegations in Paragraph 4 of the Counterclaim and therefore denies the same.

5. Trendtex admits the allegations in Paragraph 5 of the Counterclaim.

6. Trendtex admits that venue is proper in this judicial district pursuant to 28 U.S.C. § 1391, and that Trendtex filed its complaint in and is incorporated in this judicial district. Trendtex denies that it has committed any unlawful acts and thus denies the remaining allegations in Paragraph 6 of the Counterclaim.

7. Trendtex lacks information sufficient to admit or deny the allegations in Paragraph 7 of the Counterclaim and therefore denies the same.

8. Trendtex lacks information sufficient to admit or deny the allegations in Paragraph 8 of the Counterclaim and therefore denies the same.

9. Trendtex admits the allegations in Paragraph 9 of the Counterclaim.

10. Trendtex admits the allegation in Paragraph 10 of the Counterclaim that NTKN has purchased printed fabrics from Hawaiiiprint, Inc. (“*Hawaiiiprint*”). Trendtex denies the allegation that NTKN made “numerous” such purchases “[o]ver the years,” and lacks information sufficient to admit or deny the remaining allegations in Paragraph 10 of the Counterclaim and therefore denies the same.

11. Trendtex admits the allegation in Paragraph 11 of the Counterclaim that it acquired from Hawaiiiprint certain U.S. copyright registrations and related copyright rights. Trendtex lacks information sufficient to admit or deny the remaining allegations in Paragraph 11 of the Counterclaim and therefore denies the same.

12. Trendtex admits the allegation in Paragraph 12 of the Counterclaim that NTKN has purchased printed fabric from Trendtex. Trendtex denies the allegation that NTKN made “numerous” such purchases. Trendtex lacks information sufficient to admit or deny the remaining allegations in Paragraph 12 of the Counterclaim and therefore denies the same.

13. Trendtex admits the allegation in Paragraph 13 of the Counterclaim that its attorney sent an email on or about October 27, 2021, to NTKN notifying it of certain copyright infringements.

14. Trendtex admits the allegations in Paragraph 14 of the Counterclaim that on February 2, 2022, NTKN’s outside counsel responded to Trendtex, the words of such response speak for themselves. Trendtex denies the remaining allegations in Paragraph 14 of the Counterclaim.

15. Trendtex denies the allegation in Paragraph 15 of the Counterclaim that it threatened to sue NTKN’s resale customers for copyright infringement. Trendtex

lacks information sufficient to admit or deny the remaining allegations in Paragraph 15 of the Counterclaim, and on that basis denies them.

16. Trendtex admits the allegations in Paragraph 16 of the Counterclaim that it sent an email to counsel for NTKN, the words of which speak for themselves, and attached a draft complaint alleging claims of copyright infringement relating to certain of its U.S. copyright registrations, including the registrations identified in its October 27, 2021 correspondence. Trendtex denies the remaining allegations in Paragraph 16 of the Counterclaim.

17. Trendtex admits the allegation in Paragraph 17 of the Counterclaim that NTKN responded via a letter on June 17, 2022, the words of which speak for themselves. Trendtex denies the remaining allegations in Paragraph 17 of the Counterclaim.

18. With regard to Paragraph 18 of the Counterclaim, Trendtex states that the words of the letter speak for themselves. Trendtex denies the remaining allegations in Paragraph 18 of the Counterclaim.

19. Trendtex admits the allegation in Paragraph 19 of the Counterclaim that Trendtex filed its Complaint in this action. Trendtex denies the remaining allegations in Paragraph 19 of the Counterclaim.

20. Trendtex lacks information sufficient to admit or deny the allegations in Paragraph 20 of the Counterclaim and therefore denies the same.

21. Trendtex denies the allegations in Paragraph 21 of the Counterclaim.

22. Trendtex denies the allegations in Paragraph 22 of the Counterclaim.

23. As to Paragraph 23 of the Counterclaim, Trendtex admits that it issued notices of copyright infringement to certain parties, the words of which speak for themselves. Trendtex denies the remaining allegations in Paragraph 23 of the Counterclaim.

24. As to Paragraph 24 of the Counterclaim, Trendtex states that the words of its notices of copyright infringement speak for themselves. Trendtex denies the remaining allegations in Paragraph 24 of the Counterclaim.

25. Trendtex denies the allegations in Paragraph 25 of the Counterclaim.

26. Trendtex denies the allegations in Paragraph 26 of the Counterclaim.

27. Trendtex denies the allegations in Paragraph 27 of the Counterclaim.

28. Trendtex denies the allegation in Paragraph 28 of the Counterclaim that Trendtex made false statements. Trendtex lacks information sufficient to admit or deny the remaining allegations in Paragraph 28 of the Counterclaim and therefore denies the same.

29. Trendtex denies the allegations in Paragraph 29 of the Counterclaim.

30. As to Paragraph 30 of the Counterclaim, Trendtex realleges and incorporates its responses to Paragraphs 1-29 in the paragraphs above as if fully and completely set forth herein.

31. Trendtex lacks information sufficient to admit or deny the allegations in Paragraph 31 of the Counterclaim and therefore denies the same.

32. As to Paragraph 32 of the Counterclaim, Trendex denies that it committed any wrongful conduct. Trendtex lacks information sufficient to admit or deny the remaining allegations in Paragraph 32 of the Counterclaim and therefore denies the same.

33. As to Paragraph 33 of the Counterclaim, Trendtex admits that it was aware that Shaka Time and Tropiholic were selling or offering to sell garments created from fabrics with infringing surface designs. Trendtex lacks information sufficient to admit or deny the remaining allegations in Paragraph 33 of the Counterclaim and therefore denies the same.

34. As to Paragraph 34 of the Counterclaim, Trendtex admits that it sent notices of copyright infringement to certain parties, the words of which speak for themselves. Trendtex further admits that Trendtex filed a complaint against certain parties, the words of which speak for themselves. Trendtex denies the remaining allegations in Paragraph 34 of the Counterclaim.

35. Trendtex denies the allegations in Paragraph 35 of the Counterclaim.

36. Trendtex denies the allegations in Paragraph 36 of the Counterclaim.

37. Trendtex denies the allegations in Paragraph 37 of the Counterclaim.

38. Trendtex denies the allegations in Paragraph 38 of the Counterclaim.

39. As to Paragraph 39 of the Counterclaim, Trendtex realleges and incorporates its responses to Paragraphs 1-38 in the paragraphs above as if fully and completely set forth herein.

40. Trendtex lacks information sufficient to admit or deny the allegations in Paragraph 40 of the Counterclaim and therefore denies the same.

41. Trendtex denies the allegations in Paragraph 41 of the Counterclaim.

42. Trendtex denies the allegations in Paragraph 42 of the Counterclaim.

43. Trendtex denies the allegations in Paragraph 43 of the Counterclaim.

44. As to Paragraph 44 of the Counterclaim, Trendtex realleges and incorporates its responses to Paragraphs 1-43 in the paragraphs above as if fully and completely set forth herein.

45. Trendtex denies the allegations in Paragraph 45 of the Counterclaim.

46. Trendtex denies the allegations in Paragraph 46 of the Counterclaim.

47. Trendtex denies the allegations in Paragraph 47 of the Counterclaim.

48. Trendtex denies the allegations in Paragraph 48 of the Counterclaim.

49. Trendtex denies the allegations in Paragraph 49 of the Counterclaim.



## **AFFIRMATIVE DEFENSES**

Without admitting that NTKN is entitled to any relief whatsoever, Trendtex asserts the following affirmative and other defenses set forth below and reserves the right to allege additional defenses in the event discovery or other information indicates additional defenses are appropriate:

### **FIRST AFFIRMATIVE DEFENSE**

#### **(Failure to State a Claim)**

NTKN fails to state a claim upon which relief can be granted.

### **SECOND AFFIRMATIVE DEFENSE**

#### **(Privilege)**

NTKN's counterclaims are barred, in whole or in part, on the grounds of privilege.

### **THIRD AFFIRMATIVE DEFENSE**

#### **(Justified Conduct)**

NTKN's counterclaims are barred, in whole or in part, because Trendtex's alleged actions were justified.

### **FOURTH AFFIRMATIVE DEFENSE**

#### **(Assertion of Bona Fide Claims)**

NTKN's counterclaims are barred, in whole or in part, because Trendtex asserted bona fide claims.

**FIFTH AFFIRMATIVE DEFENSE**

**(Laches/Estoppel/Acquiescence/Waiver)**

NTKN's counterclaims are barred, in whole or in part, by the doctrines of laches, estoppel, acquiescence and/or waiver.

**SIXTH AFFIRMATIVE DEFENSE**

**(Unclean Hands)**

NTKN's counterclaims are barred, in whole or in part, by the doctrine of unclean hands.

**PRAYER FOR RELIEF**

WHEREFORE, Trendtex requests entry of judgment in its favor and against NTKN as follows:

1. Dismissing NTKN's Counterclaim in its entirety, with prejudice and on the merits;
2. Denying NTKN's requests for damages, costs, attorneys' fees, statutory penalties, equitable relief, and all other relief it seeks;
3. Awarding Trendtex its costs, expenses, disbursements, and reasonable attorneys' fees as and if permitted by law; and
4. Awarding Trendtex such other further relief that the Court deems just and equitable.

DATED: Honolulu, Hawaii, November 14, 2022.

CADES SCHUTTE  
A Limited Liability Law Partnership

/s/ Trisha L. Nishimoto

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